



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

supply. There is a "cause and effect" aspect of this situation "too deep for words." We suspect that a great many men eligible for these decorations question whether they are "Victory" medals.

LORD READING, he who was born Rufus Isaacs of an alien race, has arrived in India to follow Lord Chelmsford as Viceroy and representative of the King-Emperor. There is comfort in the analysis of his qualifications, which an acute contributor to the *London Times* gives. He has the power of concentration to master many facts and select the key to sound synthesis or generalization. That is a distinctively Jewish trait. He is a man to whom law "is an instrument of political liberty, as it was to Coke and the great common-law lawyers of Stuart days, a mold into which our glowing aspirations are to run to cool and harden." Therefore, says this analyst, knowing "the great part that the common law has played in English history in curbing the tyranny of the Executive," the returning Lord Chancellor and new Viceroy, "as several of his speeches have shown, goes out to India with a passionate faith in law as the great weapon of constitutional progress." Thus, romantic as are some of the aspects of this mission, they are none the less so because "clothed in the quiet, sober garments of the law." Since India now faces a revolutionary movement, led by Ghandi, the ascetic, idealistic, and eloquent native, all the more timely is the advent of a jurist, albeit one with a social imagination.

WHEN the police of New York City recently attempted to prevent a series of boxing exhibitions in the armory of a Coast Defense command, they were told by the commanding officer that Federal authority superseded a State law—which the boxers were breaking—and that the "exhibition" was being held to stimulate recruiting. That is to say, in times of peace the army and navy have a right to defy the will of the people of the Empire State; the particular form of law-breaking being a brutal display of fistic prowess calculated to induce men to become professional warriors. Nice, is it not?

BRITISH juridical circles suffered a major loss with the death, March 17, of Sir John Macdonell, a Scot, trained at Aberdeen and Edinburgh universities, to whom, as the *London Times*, commenting upon his death, said: "Law was a human thing and not a code. . . . Whether he spoke or wrote on the legal system of ancient Greece, or on the origins and development of the Common Law of England, or on the great writers of international jurisprudence, he disclosed a mind of

rare learning. He proved the continuity of the law and its evolution toward great ideals. He had a faith in its ultimate triumphs, which almost amounted to a religion." His modernity was shown by his vital interest in eugenics. He shared in forming the Penal Reform League, and sat on the Royal Commission on Divorce. To him the Journal of Comparative Legislation and International Law owed much as patron and contributor. He edited volumes on the "State Trials." At his feet as teacher sat many of the youth of China and Japan, who derived from him ideals and technique. In biography he had made posterity his debtor by writing estimates of great jurists. Posthumous works on "Treaties" and "Private International Law" will add to his fame and his record for prolific output.

INTERNATIONAL ORGANIZATION—EXECUTIVE AND ADMINISTRATIVE*

By JAMES BROWN SCOTT

Director of the Division of International Law of the Carnegie Endowment for International Peace

MR. CHAIRMAN, LADIES AND GENTLEMEN: My purpose is not to quarrel with the "League to Enforce Peace" or its partisans. My idea is something very different. It is a consideration of the question, which is very fundamental, of the relation which exists between force on the one hand and justice on the other, and to examine how far we can say that force can ever be trusted to find out justice, and finding out justice, to secure its realization. That is a point about which we do not need to quote Penn, nor do I need to refer to the distinguished authorities who have been cited in behalf of a league to enforce peace, a league of peace, or a league of honor, as, by successive gradations, the presidential plan has, little by little, developed into "a league of honor," a term used in his epoch-making address of April 2, before the Congress. The question simply is, What has been the experience of the world since the first time that man went upright on two legs down to the present day? We have a right to invoke the history of mankind down to the present day in this matter of force in the settlement of disputes, because, until and including the present day, force has been invariably and inevitably used.

In this way, going back to primitive man, up to the present day we find that force has not brought forth the fruits of perfect justice, and it seems to me we are, perhaps, justified in hesitating to accept a reorganization of the world based upon a principle which has always been tried and which hitherto has apparently not proved successful. Instead of force between two nations, we are now to have force between many nations; instead of the force of nations A, B, and C, which may happen to be in alliance, we are to have a force of the nations, beginning with A, B, and C and going down to X, Y, and Z, if they

* An address given April 27, 1917, before American Society of International Law, in reply to the address of Mr. William C. Dennis in favor of a League to Enforce Peace.

can qualify as progressive nations, because all nations are not to be admitted to this league to enforce peace. We are going to have only those that stand the examination, those that are forward, and not those that are backward; and I venture to prophesy that it will be a very difficult task to line up the sheep and the goats, separating one from the other, to the satisfaction of the sheep, if they do not wish to be goats, and to the satisfaction of the goats, if they do not wish to be sheep. You must have something definite. You must have something that will produce peace and not plunge the nations into war, because, by this plan, if one nation breaks the agreement, all nations, apparently, are to break it, because there has to be a union of minds and spirits or else they would not come into this circle for the administration of justice. They must be nations of a certain standing; and then, having this certain standing, they must pledge themselves to go to war in order to accomplish the particular purpose, if some commission or international council shall decide that some nation should have submitted either this matter to a council of conciliation or should have submitted the matter in question to a judicial decision.

I am merely speaking of these matters by way of introduction. I am willing, for the purpose of the present phase of the discussion, to admit that there is a league to enforce peace in being; that the difficulties of separating the sheep from the goats, of designating the progressive nations and the unprogressive nations, and forming a league of nations, who by a resort to arms have shown their interest in justice—I am willing to admit that there is such a league in being, and that it uses the strongest of terms that can possibly be found to unite the nations in a single force, to use the thought of William Penn, and to use this force in order to make war against a nation considered not to have a case, because, upon the bidding of the nations of the league, it has not submitted its case to a council of conciliation or to a court of justice. But what I ask myself is this: If in times past there have been agreements which nations have not lived up to, how are we to imagine, how are we to be justified in our belief, after the experience of mankind in the breaking of treaties, that because this bears the charmed name of "A League to Enforce Peace" these nations will live up to this agreement when they have refused to live up to many of their other agreements? For, if you examine any collection of treaties, you will find that not merely one nation, or a second nation, or a third nation has failed in its international agreements, but that all nations are tarred with the same stick. Whenever a treaty has been entered into which has borne rather hardly or harshly against a nation, that nation has either interpreted the obligation out of existence, or it is declared not to be binding, or it has flatly refused to honor its obligations, alleging, if you please, a change of circumstances.

But, I would ask, suppose this league is to be composed of twelve members, and that one of the members commits an act of hostility. The question is not, according to the statement, whether the nation was or was not justified in committing the act of hostility; whether it was right or whether it was wrong; whether it was the assailant or not; the simple condition is that one

nation used force without in the first instance submitting its claim to a council of conciliation, or to a court if it be a justiciable question. Now, if this one nation—number twelve, we will call it—does, in a dispute with number eleven, refuse to submit the matter in dispute to the council of conciliation or to the court of justice, and, taking the law into its own hands, invades the territory of number eleven, declaring war without first having submitted the matter to conciliatory advice or to judgment, then the other powers are to unite their land or naval forces or to use economic pressure in order to punish the recalcitrant nation, number twelve, which agreed to this league, to which it is a contracting party, but which is not living up to its agreement.

It is indeed a very attractive plan, although a rather specious one, because Mr. Dennis very honestly and very properly said there would be no compulsion to bring the nations into this league—differing from Penn's plan, by which they should be forced into it—but the nations voluntarily are to join this group. And where, it may be asked, is the wrong, is the crime, in forcing a nation to live up to the agreement which it freely enters into, not by the use of force, not by duress? Seductive it is; but the fact is that in times past nations have insisted on living up to agreements when in harmony with their interests, and they have not lived up to them when they have not been to their interest. I bemoan this fact; I wish it were not so; but you do not cure this tendency in nations merely by duplicating evils.

The resort to force is to be the result of an agreement. What possible ground can you have for the belief that the ten nations uniting themselves to the eleventh, which was attacked, would, as a matter of fact, fall upon the twelfth nation hip and thigh unless it were to their interest to fall upon this recalcitrant? If it were to their interest to fall upon it, they would do so without a treaty. Therefore the treaty is unnecessary. If it is not to their interest to fall upon this nation, they will not do so, and, if they are honest nations, they will say so frankly. That was the case with Sir Edward Grey, to whom reference was made. When the French Ambassador and the Russian Ambassador requested Sir Edward Grey to state that Great Britain would unite its forces with those of Russia and France, Sir Edward Grey frankly remarked that public opinion in England would not allow Great Britain to go to war on a question involving Serbia; but when Belgium was threatened, although there was no treaty between Great Britain and the other countries to go to war if Belgium was invaded—the Belgian treaty being simply a promise on the part of the contracting parties to observe Belgium's neutrality, but not obliging each or any of them to go to war—the mere threat, coupled with a reasonable belief that Germany would invade Belgium, caused Great Britain, unprepared as it was, with but a trifling land army, although it had a magnificent navy, to serve notice upon the Imperial German Government that if the territory of Belgium were invaded the Government of Great Britain would consider it a hostile act and declare war on Germany. I am not impugning Great Britain's motives. I rejoice that she resisted and threw herself in the path of the German army. But we must understand why Great Britain was willing to risk a trial of

strength with Germany in the case of Belgium when it was not willing to risk a trial of strength in a matter concerning Serbia. The reason is that there was an interest which appealed to Great Britain, with or without a treaty, which made it a life-and-death matter, and Great Britain drew the sword and, thank God, it holds it today, in its own interest, which is also the interest of the world, as I conceive it.

But, with or without a treaty, Great Britain has ever resorted to force wherever it was to the interest of Great Britain to resort to force. What interest would a South American nation, for I suppose some South American nations are to be permitted to qualify for admission into this league of peace, have in a matter involving Serbia? What interest would China have in a matter involving Serbia? What interest would Japan have in a matter involving Serbia, as such?

My proposition is that nations, in the long run, act upon their own interests; that they act upon those interests whether or not those interests are stated and guaranteed by treaty; that after they put their hands and seals to a treaty and it is not to their interest to observe the terms of that treaty, there are diplomats and there are lawyers shrewd enough to prove to the unwary and to the layman and to the world at large that the nation is not bound by the terms of the treaty. Italy was perfectly willing, and I do not criticize Italy, to take advantage of the Triple Alliance as long as it appeared to be Italy's interest to be a party to the Triple Alliance; but when the Triple Alliance did not seem to be the interest of Italy, Italy did not observe its terms. It alleged that the agreement was a defensive alliance and not an aggressive one and withdrew from what was supposed to be an obligation, and instead of declaring itself for the Teutonic allies and taking their side in the matter, Italy is lined up against them as one of their bitterest opponents. Why? Because, notwithstanding the twenty, thirty, or forty years of alliance with those two powers, it was not to Italy's interest to ally itself with those powers against the Entente powers. Italy did as all nations do. It did as England would do and as the United States would do.

My cure for this is not by appealing to nations to draw the sword in certain cases, but my cure for all this is a process of education; not a process of treaty making and treaty breaking, but a process of education beginning with the young and continuing through the middle age and the old age, beginning today and tomorrow and running into the future, winning over one generation, winning over another generation, and another generation, until justice shall be the great interest of the world; whereupon, if that day ever is reached, every nation, having an equal interest in justice, will be a partisan of justice, and will see to the observance of justice. Until we have awakened the public consciousness, until we have educated it, and until we have trained it into right thinking and right doing, to submit its own acts, not merely the acts of others, to scrutiny and criticism and attack—until we have done that, treaties of this kind, now or in the future, will be as unavailing as they were in the past.

Let me come back to a matter I was discussing a little while ago. These ten powers, in the illustration I gave,

are to unite themselves to the eleventh power. But suppose they do not? What is to force the recalcitrants into line among the ten? Is there to be an executive committee, a supervisory committee, composed of a number of the powers, to supervise the actions of the others and to compel them to resort to force? No; there is not and there cannot be. There is, in my opinion, ladies and gentlemen—and I state it without fear of successful contradiction, although I am well aware it has been controverted—only one thing upon which we can build, and that is upon the good faith of the nations; and until you can train nations into the observance of their pledged word, until they can be persuaded to keep the given word, no amount of force will compel them to live up to the given word, if we are to judge of nations by the past and if we mobilize the past so as to bring it to the bar of the present.

I pass now to some broad and general observations as to the relation between justice and force. If it were proposed to be determined whether Mr. Dennis is stronger than I, that could be settled by force. If it were proposed to pit his physical strength against mine, we might do so here, without any great difficulty, and it would be quickly determined. But whether my views are right on this matter or whether his views are right on this matter is not to be determined by a wrestling match. He might trip me and throw me—and he no doubt could do it, because he is more athletic than I, and I am over age for any conscription system that has yet been proposed—but if he did trip me and did throw me, it would not settle the question whether William Penn was right, or Ladd was right, or Taft was right, or President Wilson was right. There is no appreciable relation between the exercise of physical force on the one side and moral right and truth on the other.

The experience of mankind within national lines has been that, instead of force being used for the determination of these things, there should be an appeal to reason, and every nation that makes a pretense to civilization has substituted for force not more force or collective force, but rules of law which have been agreed upon, and has had these rules of law administered by persons trained in the knowledge of the law and experienced in its administration through courts of justice. Little by little the powers of reason have won over the powers of darkness, the cause of justice has triumphed over physical force as such, and there is a consensus of opinion among all civilized nations of the world that matters of this kind are not to be settled by mobs, by riot, or by lynch law, but that they are to be settled by duly constituted courts of justice. Justice has so won its way that it is administered not by the policeman and the sheriff, but the judgment of a court of justice is almost self-executing.

It has not been heard of among nations until the present day that there should be an international sheriff, that there should be an international police, that there should be an international executive to enforce its will against a collective group of persons which we call a nation. The nations, because of the superiority of the method of resort to reason and the experience that they have had with it, will conform their actions to it without resort to force. There are hundreds of decisions by

arbitral tribunals that have been executed, which are, as a matter of fact, the justification for the belief that the nations can come to the standard of living up to justice. It is a very remarkable fact that in the United States, although there is a Supreme Court in which State may sue State in matters of a justiciable nature, there is no provision in the Constitution for haling a State before that court; there is no provision in the Constitution or any law of the United States to secure the execution of a judgment of the Supreme Court of the United States against a State; indeed, there is a decision of the Supreme Court of the United States, in the case of *Kentucky v. Dennison*, in 24 Howard Reports, at page 66, holding positively that there is no such power in the General Government or any department thereof to compel, by physical force, the execution of a judgment of the Supreme Court of the United States against a State of the Union. And yet, day by day, year by year, suits have been begun by States and judgments rendered in the Supreme Court which have been complied with, however unwillingly and grudgingly.

What the American people can do may we not believe others can do? What nine men sitting on Capitol Hill can do nine men sitting in a tribunal at large can do. Instead of training men in the handling of arms; instead of forming leagues to fall upon and prey upon nations to force them to live up to agreements, when the very agreement depends on the nations' good faith in observing it, the thing to do, I submit, is not to question their good faith, but to offer a premium for keeping it, and to engage in a campaign of systematic instruction in the schools, in public and in private, in season and out of season, for the administration of justice through orderly agencies established for that purpose, so that, little by little, the reign of law may win over the rule of barbarism.

THE INSTITUTE OF INTERNATIONAL EDUCATION

By STEPHEN J. DUGGAN, Director

THE INSTITUTE OF INTERNATIONAL EDUCATION has just completed its second year of activities. In this short time it has amply justified the anticipation of its founders in helping to develop international good will by means of educational agencies and in acting as a clearing-house of information and advice for Americans concerning things educational in foreign countries and for foreigners concerning things educational in the United States. For a number of years close relations have existed between the French and Americans, fostered by the Alliance Française, which is now thoroughly well organized in nearly every State in the Union. Spanish and Italian interests in this country have become anxious to establish closer relations between the United States and their respective countries and have applied to the Director of the Institute for aid in accomplishing this.

The Spanish Bureau of the Institute was organized to co-operate with the Junta Para Ampliacion de Estudios of Madrid. That body had been provided with funds to send students to this country and with which to invite American professors to Spain. It wished an

authoritative body to assist it. The Spanish bureau is organizing a visit to Madrid of a large group of teachers of Spanish from all over the United States. These teachers will spend next summer in the University of Madrid in perfecting their knowledge of oral Spanish and in the study of Spanish literature and history. A center for the diffusion of the culture of Spain, Portugal, and the Spanish-American countries has also been organized under the name of the Instituto de las Espanas.

The Institute is also the headquarters of the Committee on Education of the Italy-America Society. The committee has secured funds to assist Italian universities to get American books and publications. It is also arranging a tour to Italy for American students and instructors next summer. One of the interesting incidents of the tour will be the laying of a bronze wreath on Dante's tomb at Ravenna as a tribute from the institutions of learning in the United States.

Arrangements have been completed for an exchange of professors between Italy and the United States. Prof. Kenneth McKenzie, of the University of Illinois, has accepted an invitation to lecture at the University of Rome, and an invitation has been sent to Dr. Guido Biagi, of Florence, Italy, to come to the United States to lecture in American colleges and universities; the exchange to be effected next fall.

The Institute believes that a wisely selected professor, who because of his personality and scholarship can well represent America abroad, may be of great service in the development of international good will. Because of their poverty on the other side, the European nations cannot support exchange professors as they did previous to the war. They are anxious, however, to have our professors visit their universities. The Institute does not feel it can wholly support a large number of professors abroad in any one year. It has, therefore, developed its plan of grants to professors on sabbatical leave—that is, to professors on sabbatical leave who are going abroad and who are willing to lecture in foreign universities and have been invited to do so the Institute will pay the traveling expenses, going and returning, from the institution in the United States in which the professor teaches to the institution abroad in which he will lecture. The Institute has this year sent out fifteen professors on sabbatical leave to universities in many parts of the world; for example, London, Paris, Prague, Shanghai, Madrid, Strasbourg, Athens, Constantinople, and Peru.

Though the European countries cannot afford to support professors here, the Institute has invited professors from other countries to come to the United States. It has circuited during the past year a number of foreign professors of distinction among the colleges and universities of the country. Some of these gentlemen have visited a large number of institutions; others a smaller number. Though it is the desire of the Institute to send distinguished foreigners to the smaller and less frequently visited institutions, the larger colleges and universities in all parts of the country have also enjoyed the advantage of listening to their addresses. Among those who have lectured under the auspices of the Institute in this way are Baron S. A. Korff, formerly